

SENATE BILL No. 108

DIGEST OF INTRODUCED BILL

Citations Affected: IC 34-24-1-1; IC 35-43-5-2.5.

Synopsis: Counterfeit goods. Makes manufacturing or distributing an item with a counterfeit label a Class A misdemeanor. Makes the offense a Class D or Class C felony in the case of repeat or large scale offenders. Provides for forfeiture of counterfeit items and other property used to facilitate the unlawful manufacture, distribution, or possession of the counterfeit items.

Effective: July 1, 2005.

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January 4, 2005, read first time and referred to Committee on Corrections, Criminal, and Civil Matters.

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Introduced

First Regular Session 114th General Assembly (2005)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2004 Regular Session of the General Assembly.

SENATE BILL No. 108

A BILL FOR AN ACT to amend the Indiana Code concerning criminal law and procedure.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 34-24-1-1 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 1. (a) The following
3 may be seized:

4 (1) All vehicles (as defined by IC 35-41-1), if they are used or are
5 intended for use by the person or persons in possession of them to
6 transport or in any manner to facilitate the transportation of the
7 following:

8 (A) A controlled substance for the purpose of committing,
9 attempting to commit, or conspiring to commit any of the
10 following:

11 (i) Dealing in or manufacturing cocaine, a narcotic drug, or
12 methamphetamine (IC 35-48-4-1).

13 (ii) Dealing in a schedule I, II, or III controlled substance
14 (IC 35-48-4-2).

15 (iii) Dealing in a schedule IV controlled substance
16 (IC 35-48-4-3).

17 (iv) Dealing in a schedule V controlled substance

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- 1 (IC 35-48-4-4).
 2 (v) Dealing in a counterfeit substance (IC 35-48-4-5).
 3 (vi) Possession of cocaine, a narcotic drug, or
 4 methamphetamine (IC 35-48-4-6).
 5 (vii) Dealing in paraphernalia (IC 35-48-4-8.5).
 6 (viii) Dealing in marijuana, hash oil, or hashish
 7 (IC 35-48-4-10).
 8 (B) Any stolen (IC 35-43-4-2) or converted property
 9 (IC 35-43-4-3) if the retail or repurchase value of that property
 10 is one hundred dollars (\$100) or more.
 11 (C) Any hazardous waste in violation of IC 13-30-6-6.
 12 (D) A bomb (as defined in IC 35-41-1-4.3) or weapon of mass
 13 destruction (as defined in IC 35-41-1-29.4) used to commit,
 14 used in an attempt to commit, or used in a conspiracy to
 15 commit an offense under IC 35-47 as part of or in furtherance
 16 of an act of terrorism (as defined by IC 35-41-1-26.5).
 17 (2) All money, negotiable instruments, securities, weapons,
 18 communications devices, or any property used to commit, used in
 19 an attempt to commit, or used in a conspiracy to commit an
 20 offense under IC 35-47 as part of or in furtherance of an act of
 21 terrorism or commonly used as consideration for a violation of
 22 IC 35-48-4 (other than items subject to forfeiture under
 23 IC 16-42-20-5 or IC 16-6-8.5-5.1 before its repeal):
 24 (A) furnished or intended to be furnished by any person in
 25 exchange for an act that is in violation of a criminal statute;
 26 (B) used to facilitate any violation of a criminal statute; or
 27 (C) traceable as proceeds of the violation of a criminal statute.
 28 (3) Any portion of real or personal property purchased with
 29 money that is traceable as a proceed of a violation of a criminal
 30 statute.
 31 (4) A vehicle that is used by a person to:
 32 (A) commit, attempt to commit, or conspire to commit;
 33 (B) facilitate the commission of; or
 34 (C) escape from the commission of;
 35 murder (IC 35-42-1-1), kidnapping (IC 35-42-3-2), criminal
 36 confinement (IC 35-42-3-3), rape (IC 35-42-4-1), child molesting
 37 (IC 35-42-4-3), or child exploitation (IC 35-42-4-4), or an offense
 38 under IC 35-47 as part of or in furtherance of an act of terrorism.
 39 (5) Real property owned by a person who uses it to commit any of
 40 the following as a Class A felony, a Class B felony, or a Class C
 41 felony:
 42 (A) Dealing in or manufacturing cocaine, a narcotic drug, or

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- 1 methamphetamine (IC 35-48-4-1).
- 2 (B) Dealing in a schedule I, II, or III controlled substance
- 3 (IC 35-48-4-2).
- 4 (C) Dealing in a schedule IV controlled substance
- 5 (IC 35-48-4-3).
- 6 (D) Dealing in marijuana, hash oil, or hashish (IC 35-48-4-10).
- 7 (6) Equipment and recordings used by a person to commit fraud
- 8 under IC 35-43-5-4(11).
- 9 (7) Recordings sold, rented, transported, or possessed by a person
- 10 in violation of IC 24-4-10.
- 11 (8) Property (as defined by IC 35-41-1-23) or an enterprise (as
- 12 defined by IC 35-45-6-1) that is the object of a corrupt business
- 13 influence violation (IC 35-45-6-2).
- 14 (9) Unlawful telecommunications devices (as defined in
- 15 IC 35-45-13-6) and plans, instructions, or publications used to
- 16 commit an offense under IC 35-45-13.
- 17 (10) Any equipment used or intended for use in preparing,
- 18 photographing, recording, videotaping, digitizing, printing,
- 19 copying, or disseminating matter in violation of IC 35-42-4-4.
- 20 (11) Destructive devices used, possessed, transported, or sold in
- 21 violation of IC 35-47-5.
- 22 (12) Cigarettes that are sold in violation of IC 24-3-5.2, cigarettes
- 23 that a person attempts to sell in violation of IC 24-3-5.2, and other
- 24 personal property owned and used by a person to facilitate a
- 25 violation of IC 24-3-5.2.
- 26 (13) Tobacco products that are sold in violation of IC 24-3-5,
- 27 tobacco products that a person attempts to sell in violation of
- 28 IC 24-3-5, and other personal property owned and used by a
- 29 person to facilitate a violation of IC 24-3-5.
- 30 **(14) Counterfeit items manufactured, distributed, or**
- 31 **possessed in violation of IC 35-43-5-2.5, and other personal**
- 32 **property owned by a person and used by the person to**
- 33 **facilitate a violation of IC 35-43-5-2.5.**
- 34 (b) A vehicle used by any person as a common or contract carrier in
- 35 the transaction of business as a common or contract carrier is not
- 36 subject to seizure under this section, unless it can be proven by a
- 37 preponderance of the evidence that the owner of the vehicle knowingly
- 38 permitted the vehicle to be used to engage in conduct that subjects it to
- 39 seizure under subsection (a).
- 40 (c) Equipment under subsection (a)(10) may not be seized unless it
- 41 can be proven by a preponderance of the evidence that the owner of the
- 42 equipment knowingly permitted the equipment to be used to engage in

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conduct that subjects it to seizure under subsection (a)(10).

(d) Money, negotiable instruments, securities, weapons, communications devices, or any property commonly used as consideration for a violation of IC 35-48-4 found near or on a person who is committing, attempting to commit, or conspiring to commit any of the following offenses shall be admitted into evidence in an action under this chapter as prima facie evidence that the money, negotiable instrument, security, or other thing of value is property that has been used or was to have been used to facilitate the violation of a criminal statute or is the proceeds of the violation of a criminal statute:

(1) IC 35-48-4-1 (dealing in or manufacturing cocaine, a narcotic drug, or methamphetamine).

(2) IC 35-48-4-2 (dealing in a schedule I, II, or III controlled substance).

(3) IC 35-48-4-3 (dealing in a schedule IV controlled substance).

(4) IC 35-48-4-4 (dealing in a schedule V controlled substance) as a Class B felony.

(5) IC 35-48-4-6 (possession of cocaine, a narcotic drug, or methamphetamine) as a Class A felony, Class B felony, or Class C felony.

(6) IC 35-48-4-10 (dealing in marijuana, hash oil, or hashish) as a Class C felony.

SECTION 2. IC 35-43-5-2.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: **Sec. 2.5. (a) As used in this section, "counterfeit mark" means:**

(1) an unauthorized copy of an intellectual property label; or
(2) an intellectual property label that is affixed to an item without the authority of the owner of the intellectual property label.

(b) As used in this section, "intellectual property label" means a:

(1) trademark;
(2) service mark;
(3) trade name;
(4) brand name;
(5) label;
(6) term;
(7) device;
(8) design; or
(9) word;

used by a person to identify an item as being created, produced,

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1 manufactured, designed, or sold by the person.

2 (c) As used in this section, "retail value" means the usual selling
3 price charged by a person who deals in counterfeit goods for the
4 item identified by a counterfeit mark. If the item identified by a
5 counterfeit mark is a component of a finished product, the term
6 means the usual selling price charged by a person who deals in
7 counterfeit goods for a finished product containing a component
8 identified by a counterfeit mark.

9 (d) A person who knowingly or intentionally:

10 (1) manufactures;

11 (2) distributes; or

12 (3) possesses with intent to distribute;

13 an item identified by a counterfeit mark commits dealing in
14 counterfeit items, a Class A misdemeanor.

15 (e) The offense described in subsection (d) is a Class D felony if:

16 (1) the person has one (1) prior unrelated conviction under
17 this section;

18 (2) the total number of items described in subsection (d) that
19 the person manufactures, distributes, or possesses with intent
20 to distribute is more than one hundred (100) and less than one
21 thousand (1,000); or

22 (3) the total retail value of all items described in subsection (d)
23 that the person manufactures, distributes, or possesses with
24 intent to distribute is greater than one thousand dollars
25 (\$1,000) and less than ten thousand dollars (\$10,000).

26 (f) The offense described in subsection (d) is a Class C felony if:

27 (1) the person has two (2) or more prior unrelated convictions
28 under this section;

29 (2) the total number of items described in subsection (d) that
30 the person manufactures, distributes, or possesses with intent
31 to distribute is at least one thousand (1,000); or

32 (3) the total retail value of all items described in subsection (d)
33 that the person manufactures, distributes, or possesses with
34 intent to distribute is at least ten thousand dollars (\$10,000).

35 SECTION 3. [EFFECTIVE JULY 1, 2005] IC 35-43-5-2.5, as
36 added by this act, applies only to offenses committed after June 30,
37 2005.

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